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Democrats Fight to Silence Critics in Election Year

The Senate Democrats' DISCLOSE Act of 2012 (DISCLOSE II) looks to silence political opposition for short-term electoral gain, no matter the long-term harm to free speech. Modeled after [failed](#) legislation in the 111th Congress, the bill is not a boon for more disclosure; it is a ban on political opposition. It favors unions, ignores the Supreme Court, and wraps more red tape around speech in America.

DISCLOSE II is aimed at groups that could pose a threat to Washington politicians, while protecting special-interest controlled government. It facilitates what has been an all-too-familiar tactic of President Obama's team: [retaliation against political opponents](#).

Democrats' Recent Attempts to Prohibit Speech

The Supreme Court's *Citizens United* decision that private companies have a [constitutional right](#) to free speech has resulted in more political discourse. In 2010, the Senate [defeated multiple attempts](#) to pass legislation overturning *Citizens United*.

Unhappy with the 2010 election results, the Obama Administration flirted in May 2011 with issuing an [executive order](#) to restrict political advocacy by businesses competing for federal contracts. That proposal drew bipartisan opposition. The Wall Street Journal characterized the proposal as "[gangster politics](#)." The Administration has not pursued its ill-conceived plan.

This year, Senate Democrats have again introduced a flawed bill that inserts more federal government control over the American people's right to express their opinion.

Democrats have also been trying to chip away at *Citizens United* in the courts. [One recent case](#) filed by Democrats against the FEC seeks to change the rules of the road to require disclosure of donor contributions for issue advertisements. This is beyond what the Supreme Court had required. In March, the U.S. District Court for the District of Columbia sided with Democrats, and against the FEC. The FEC did not appeal, but two other groups supporting the FEC in the case did, filing notices of appeal to the U.S. Court of Appeals for the D.C. Circuit. The case is now pending and the D.C. Circuit is expected to rule on the case this fall.

Union Give-Away

Senate Democrats crafted DISCLOSE II to take advantage of the unique structure of international labor unions in a way that would leave those groups free to support liberal politicians, while tying the hands of others.

- DISCLOSE II requires organizations that engage in political advocacy to disclose payments by individuals in excess of \$10,000.
 - Most individual union members pay dues of less than \$10,000 to their local chapters, which then use the money for political purposes. Even though the unions bundle the money into millions of dollars, the contributions would not be subject to the disclosure requirements.
- DISCLOSE II also requires disclosure of payments by organizations in excess of \$50,000 in a two year cycle.
 - But it conveniently exempts “affiliates” of those organizations, including “a national or international labor organization.”
 - In practical terms, international labor organizations would not have to disclose transfers made from local chapters.
- A [multi-industry coalition of businesses](#) has noted that businesses do not have this kind of “ground up funneling structure built on mandatory dues,” and they lack a network of local affiliates from which exempted funds can be drawn. This loophole in the law is built for labor unions.

Discouraging Political Participation

Current campaign finance laws [already require](#) organizations that engage in political speech to disclose critical information. For example:

- Political action committees must disclose all of their donors and disbursements;
- Super PACs, contrary to common misperceptions, [must also report](#) their contributions and expenditures;
- Organizations engaged in express advocacy [must include disclaimers](#) with their communications and must file public disclosure reports.

To comply with the existing web of rules, organizations engaging in political speech must hire armies of attorneys. DISCLOSE II expands these requirements and costs dramatically. Faced with increasing financial and regulatory burdens, many would-be speakers may refrain from expressing their opinion altogether.

DISCLOSE II creates onerous compliance requirements in the two significant ways.

- The period before elections when organizations must disclose their donors is considerably expanded.
 - Currently, regulations cover “electioneering communications” 30 days before a primary election and 60 days before a general election.
 - Under DISCLOSE II, the period for communications mentioning candidates for Congress would run from January 1 of the election year through the date of election, which in most cases is more than 10 months.
 - For a presidential election, the reporting period would run from 120 days before the primary or caucus in an individual state and continue through the general election. In some states with early primaries, that means speech would be restricted for more than a full year.
- The “Stand By Your Ad” section of DISCLOSE II also stifles political messages.
 - Section 3 of the bill requires that any covered communication contain a disclosure statement from the sponsor. For an organization’s message, the CEO or most senior official would have to read a script identifying himself or herself and the top donors to the organization.
 - Since these donor disclosures are already publicly available, the only purpose served by the disclaimer is to limit the amount of time available for the actual political message. Some estimates are that the on-air disclaimers would take up nearly half of a 30-second television advertisement.

Intimidation of Political Opponents

The [Supreme Court has made it clear](#) that the First Amendment does not allow the government to require membership disclosure where there is a “reasonable probability” that donors will be subject to “threats, harassment, or reprisals.”

Democrats already have begun to do just that—ironically trying to [intimidate political opponents](#) using campaign disclosure laws designed to ensure civility in elections. One businessman, Frank Vandersloot, the CEO of Melaleuca, recently became the target of a [damaging](#) smear campaign by the Obama organization after he donated to a super PAC supporting a Republican presidential candidate. Opponents of free speech have resorted to [stark intimidation](#) at shareholder meetings of corporations that participate in public policy debates. By requiring the disclosure of names and addresses of donors, DISCLOSE II facilitates these kinds of retaliatory tactics.

Of course, given the loopholes written into DISCLOSE II, political retaliation is more likely against people opposing Democratic politicians. President Obama famously abandoned public financing in his last campaign because he had been so successful in bundling unprecedented amounts of money, including a record amount from Wall Street. Now he and his Democratic allies want to keep other people from spending their own money to oppose them.